

## **R430. Health, Health Systems Improvement, Child Care Licensing.**

### **R430-2. General Licensing Provisions, Child Care Facilities.**

#### **R430-2-1. ~~[Legal-]~~Authority and Purpose.**

This rule is adopted pursuant to Title 26, Chapter 39. It defines the standards that a person(s) must follow to obtain a license for a child care facility.

#### **R430-2-2. ~~[Purpose-~~**

~~\_\_\_\_\_ This rule defines the standards that a person s must follow to obtain a license for a child care facility. Except as exempted by Utah Code Section 26-39-106, no person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a child care facility in this state without first obtaining a license from the Department.]~~**Informal Discussions.**

Independent of any administrative proceeding, an applicant may request at any time to discuss a Department decision with Department staff.

#### **R430-2-3. Initial Application.**

(1) An applicant for a license shall submit to the Utah Department of Health a completed ~~[file a Request for Agency Action/]~~~~[L]~~license ~~[A]~~application ~~[with the Utah Department of Health]~~ on a form furnished by the Department.

(2) Each applicant shall comply with all regulations, ordinances, and codes, zoning, fire, safety, sanitation, building and licensing laws~~[- regulations, ordinances, and codes]~~ of the city and county in which the facility is located. The applicant shall obtain the following clearances and submit them to the Department as part of the ~~[completed]~~application~~[- to the licensing agency]~~:

(a) ~~[A]~~a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes ~~[with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.]~~ ;

(b) ~~[A]~~a satisfactory report by a local health department for facilities providing food service~~[- at initial application and upon a change of ownership.]~~;and

(c) a city business license if required~~[Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling].~~

(3) The ~~[licensee]~~applicant shall~~[comply with the following requirements]~~:

(a) ~~[L]~~list all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) ~~[P]~~provide the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) ~~[L]~~list, for all owners, all child care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest~~[;]~~.

(4) The licensee shall provide the following written assurances on all individuals listed in R430-2-3(3):

(a) ~~[N]~~none of the persons has been convicted of a felony;

(b) ~~[N]~~none of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a child care facility; [and]

(c) ~~[N]~~none of the persons within the five years prior to the date of application had an interest in a licensed child care facility that has been closed as a result of a settlement agreement resulting from a license revocation; and

(d) ~~[N]~~none of the persons has been convicted of child abuse, neglect, or exploitation.

(5) The applicant shall submit background clearance documents as required in R430-6.

(6) The applicant shall submit with the completed application a non-refundable license fee as established in accordance with Subsection 26-39-104(1)(c).

#### **~~[R430-2-4. License Fee.~~**

~~\_\_\_\_\_The licensee shall submit a license fee as established in accordance with Subsection 26-39-104(1)(c) with the completed application form. A current fee schedule is available from the Department upon request. The Department shall assess late fees according to the fee schedule.~~

#### **~~R430-2-5. Additional Information.~~**

~~\_\_\_\_\_ [The Department may review policy and procedure manuals prior to issuing a license to determine compliance with licensure.]~~

#### **~~R430-2-[6]4. Initial License Issuance or Denial.~~**

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application~~[packet or within 12 months of the date the first component of an application packet is received].~~

(2) The applicant must pay fees and reapply for a license~~[licensure]~~ if the ~~[application packet is not completed within 12 months]~~applicant does not complete the application including all necessary submissions within six months of first submitting any portion of an application.

~~[(3) The Department shall review the policy and procedure manual within 60 days after submittal.]~~

~~[4]~~(3) Upon verification of compliance with licensing ~~[requirements]~~rules, the Department shall issue a ~~[provisional]~~ license.

~~[5]~~(4) The Department shall issue a written ~~[notice of agency]~~ decision denying a license if the applicant and the facility are~~[is]~~ not in compliance with the ~~[applicable laws,]rules[, or regulations]~~.

~~[(6) An applicant who was denied licensure may reapply for initial licensure as a new applicant and shall be required to initiate a new request for agency action.]~~

~~[(7) The Department shall assess an administrative fee on all denied license applications. The Department shall subtract the fee from any fees submitted as part of the application packet and refund the balance to the applicant.]~~

(5) Pursuant to R501-12-4(8)(h), a provider may not be licensed to provide foster care and child care at the same time.

#### **R430-2-5. License Extension.**

A licensee that fails to renew its license by the license expiration date may have an additional 30 days to complete the renewal if the licensee pays a late fee.

#### **~~[R430-2-7. License Provisions.~~**

~~\_\_\_\_\_ (1) The license is not assignable or transferable.~~

~~\_\_\_\_\_ (2) Each license is the property of the Department. The licensee shall return the license~~

within five days after notifying the Department of closure or upon the request of the Department.

~~—(3) The facility shall post the license on the facility premises in a place readily visible and accessible to the public.]~~

#### **R430-2-[8]6. Expiration and Renewal.**

(1) Each [standard]license [shall]expire~~s~~ at midnight on the day designated on the license as the expiration date, unless previously revoked by the Department.~~[-If the facility is operating under a conditional license for a period extending beyond the expiration date of the current license the Department shall establish a new expiration date. A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.]~~

(2) The licensee shall submit a completed ~~[file a Request for Agency Action/]~~[L]license [A]application[-form], applicable fees~~[,]~~ and ~~[clearances]~~a satisfactory report by a local health department for facilities providing food service to the Department ~~[45]~~30 days before the current license expires.

~~[(3) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.]~~

~~[4]~~(3) The Department shall not renew a license for a child care facility ~~[who]~~that discontinues child care services. ~~[The child care facility shall request an initial license.]~~

#### **R430-2-8. Change of Ownership.**

(1) A licensee whose ownership or controlling interest has changed must submit a completed license application, applicable clearances, and fees to the Department 30 days prior to the proposed change. The licensee shall obtain the following clearances and submit them to the Department as part of the application:

(a) a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes;

(b) a satisfactory report by a local health department for facilities providing food service;  
and

(c) a city business license if required.

(2) A change in ownership that requires action under subsection (1) includes any change that:

(a) transfers the business enterprise to another person or firm;

(b) is a merger with another business entity if the directors or principals in the merged entity differs by 49 percent or more from the directors or principals of the original licensee; or

(d) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 49 percent or more from the board of the original licensee.

(3) A transfer between departments of government agencies for management of a government-owned childcare facility is not a change of ownership.

(4) Before the Department may issue a new license for a change of ownership, the prospective licensee shall document that:

(a) all documents required by rules applicable to the prior licensee remain in the facility and have been transferred to the custody of the new licensee; and

(b) the prospective licensee has adopted the existing policies and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body

before the change of ownership occurs;

(5) The Department shall not issue a new license until the prospective licensee corrects all previously cited and not yet corrected violations. The prospective licensee may request a new correction date before the change of ownership becomes effective.

(6) When the Department verifies that the facility is in compliance with all licensing rules, the Department shall issue a new license effective the date that the Department determines compliance.

**[R430-2-9. New License Required.**

~~\_\_\_\_\_ (1) The licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:~~

~~\_\_\_\_\_ (a) Occupancy of a new or replacement facility.~~

~~\_\_\_\_\_ (b) Change of ownership.~~

~~\_\_\_\_\_ (2) Before the Department may issue a new license for a change of ownership, the prospective licensee shall provide documentation that:~~

~~\_\_\_\_\_ (a) All child care records, personnel records, staffing schedules, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.~~

~~\_\_\_\_\_ (b) The existing policy and procedures manual has been adopted by the prospective licensee, or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.~~

~~\_\_\_\_\_ (c) The licensee can submit written documentation of the right to use the property.~~

~~\_\_\_\_\_ (3) The prospective licensee is responsible to correct all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee.~~

~~\_\_\_\_\_ (a) The prospective licensee may submit a revised plan of correction to be reviewed for approval by the Department, before the change of ownership becomes effective.~~

~~\_\_\_\_\_ (b) Failure to correct deficiencies by the new licensee may result in sanction action or revocation of the license.~~

~~\_\_\_\_\_ (4) If a license is issued to the new owner, the previous licensee shall return his license to the Department.~~

~~\_\_\_\_\_ (5) When the Department verifies that the facility is in compliance with all applicable licensure rules, the Department may issue a new license effective the date that the Department determines compliance.]~~

**R430-2-[10]9. Change in License[Licensure Status].**

(1) The licensee shall submit a completed ~~[Request for Agency Action/]~~[L]license ~~[A]~~application to amend or modify an existing license~~[licensure status]~~ at least 30 days before any of the following proposed or anticipated changes:

(a) ~~[H]~~increase or decrease of licensed capacity~~[-];~~

(b) ~~[C]~~change in name of facility~~[-];~~

(c) ~~[C]~~change in license category~~[-];~~

(d) ~~[C]~~change of license classification~~[-];~~

(e) ~~[C]~~change in [administrator for centers]center director~~[-];~~

(f) change in name of licensee; and

(g) change in area where child care is provided or a change in interior usable play space.

(2) An increase of licensed capacity may ~~[incur]~~require payment of an additional license fee~~[if the increase exceeds the maximum number of units in the fee category division of the existing license]~~. This fee ~~[shall be]~~is the difference in the license fee for the existing and proposed capacit~~[y]~~ies.

(3) The Department may issue an amended license when the Department verifies that the licensee and facility are in compliance with all ~~[applicable licensure]~~licensing rules. The expiration date of the amended license remains the same as the prior license.

**R430-2-~~[7]~~10. License [Provisions]Transferability, Posting.**

(1) ~~[The]~~A license is not assignable or transferable.

(2) The ~~licensee~~[facility] shall post the license on the facility premises in a place readily visible and accessible to the public.

**R430-2-~~[11]~~11. Voluntary Closure [Facility Ceases Operation].**

A licensee that voluntarily ceases operation shall:

(1) ~~[N]~~otify the Department and the children's families at least 30 days before the effective date of closure~~[-]; and~~

(2) ~~[M]~~ake provision for the safe keeping of records.

~~[(3) Return the license to the Department within five days after the facility ceases operation.]~~

**~~[R430-2-12. Provisional License.~~**

~~—— (1) A provisional license is an initial license issued to a licensee for a probationary period.~~

~~—— (a) In granting a provisional license, the Department shall assure that the facility has the potential to provide services and shall be in full compliance with licensure rules during the six month period.~~

~~—— (b) The department shall issue a provisional license for six months, and shall not issue more than one provisional license to any child care facility in any 12-month period.~~

~~—— (c) Provisional licenses are nonrenewable.~~

~~—— (2) If the licensee fails to meet terms and conditions of licensure before the expiration date of the provisional license, the provisional license automatically expires.]~~

**~~[R430-2-13. Conditional License.~~**

~~—— (1) A conditional license is a remedial license issued to a licensee found to have:~~

~~—— (a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction,~~

~~—— (b) more than three cited repeat Class I or II violations from the previous inspection, or~~

~~—— (c) failure to fully comply with administrative procedures for licensing.~~

~~—— (2) A standard license is automatically revoked when the Department issues a conditional license.~~

~~—— (3) The Department may not issue a conditional license after the expiration of a provisional license.~~

~~—— (4) In granting a conditional license, the Department shall assure that the lack of full compliance is not likely to immediately harm the health and safety of the children.~~

~~—— (5) The Department shall establish the period of time for the conditional license based on~~

an assessment of the nature of the existing violations and facts available at the time of the decision.

\_\_\_\_\_ (6) The Department shall set conditions whereby the licensee must comply with a plan of correction.

\_\_\_\_\_ (7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the conditional license automatically expires.]

**[R430-2-14. Standard License.**

\_\_\_\_\_ The Department may issue a standard license upon completion of the following:

\_\_\_\_\_ (1) the licensee meets the conditions attached to a provisional or conditional license;

\_\_\_\_\_ (2) the licensee corrects the identified rule violations; or

\_\_\_\_\_ (3) the facility assures the Department that it complies with R430-2-8 and R430-2-9.]

**[R430-2-15. Variances.**

\_\_\_\_\_ (1) A licensee may request a variance from state rules at any time.

\_\_\_\_\_ (2) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

\_\_\_\_\_ (3) The Department may require additional information from the facility before acting on the request.

\_\_\_\_\_ (4) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

\_\_\_\_\_ (5) If the Department grants a request, the Department shall amend the license in writing to indicate the approval. The licensee shall keep a copy of the approved variance on file in the facility and make it available to all interested parties on request.

\_\_\_\_\_ (6) The Department may grant variances for specific amounts of time and renew variances upon request of the licensee.

\_\_\_\_\_ (7) The Department may impose conditions upon granting a variance to assure acceptable levels of health and safety.

\_\_\_\_\_ (8) The Department may limit the duration of any variance.

\_\_\_\_\_ (9) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

\_\_\_\_\_ (10) The Department may issue a notice of agency action to revoke a variance if:

\_\_\_\_\_ (a) The variance could adversely affect the health or safety of the children.

\_\_\_\_\_ (b) The facility fails to comply with the conditions of the variance as granted.

\_\_\_\_\_ (c) The licensee notifies the Department in writing that he wishes to relinquish the variance and be subject to the rule previously varied.

\_\_\_\_\_ (d) There is a change in statute, rule, or case law affecting the reason for the variance.]

**[R430-2-16. Deemed Status.**

\_\_\_\_\_ The Department may grant deemed status to facilities accredited by the National Academy of Early Childhood Programs, (NAEYC), or National Accreditation Commission for Early Care and Education Programs, National Association for Family Child Care (NAFCC) or National Early Childhood Program Accreditation in lieu of the annual licensing inspection by the Department upon completion of the following:

\_\_\_\_\_ (1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

~~\_\_\_\_\_ (a) Initiate deemed status,~~  
~~\_\_\_\_\_ (b) Continue deemed status, or~~  
~~\_\_\_\_\_ (c) Relinquish deemed status during the licensing year of application.~~  
~~\_\_\_\_\_ (2) This request constitutes written authorization for the Department to attend the exit conference.~~  
~~\_\_\_\_\_ (3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:~~  
~~\_\_\_\_\_ (a) Accreditation Certificate;~~  
~~\_\_\_\_\_ (b) Survey reports and recommendations; and~~  
~~\_\_\_\_\_ (c) Progress reports of all corrective actions underway or completed in response to the accrediting body's action or Department recommendations.~~  
~~\_\_\_\_\_ (4) The Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes, including:~~  
~~\_\_\_\_\_ (a) annual and follow-up inspections,~~  
~~\_\_\_\_\_ (b) investigation of complaints, and~~  
~~\_\_\_\_\_ (c) verification of the following:~~  
~~\_\_\_\_\_ (i) violations of state law, rule or standard identified in the accrediting body's survey; or~~  
~~\_\_\_\_\_ (ii) violations of state law, rule or standard identified in the Department's survey.~~  
~~\_\_\_\_\_ (5) The Department may annually conduct validation inspections of facilities accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the licensing rules, the provisions relating to an annual inspection shall apply.]~~

**[~~R430-2-17. Transition.~~**

~~\_\_\_\_\_ (1) The licenses for all facilities licensed as of June 30, 1997 shall expire by virtue of this rule.~~  
~~\_\_\_\_\_ (2) Licenses issued by the Department of Human Services in May and June of 1997 are reissued as provisional licenses by the Department of Health from July 1, 1997 to December 31, 1997.~~  
~~\_\_\_\_\_ (3) All other licenses issued by the Department of Human services shall be extended by the Department of Health until their existing expiration date.]~~

**KEY: child care facilities**

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